

CRIMINAL MISC.NO.47861 M OF 2005

DATE OF DECISION: SEPTEMBER 10, 2007

Darshan Singh

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. R. S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate,
for the petitioner.

Mr. M. C. Berry, Sr. DAG, Punjab,
for respondent No.1.

Mr. S. K. Sharma, Advocate,
for respondent No.2.

RANJIT SINGH J.

Prayer is for quashing of FIR No.35 dated 16.3.1996 under Sections 494, 406, 498A IPC registered at Police Station Malerkotla, District Sangrur.

This marriage between petitioner and respondent No.2 has got into trouble after 25 years. They got married on 9.6.1970. The relationship between the couple subsequently got strained and the complainant-wife started living with her parents alongwith her daughter. She lodged the abovesaid FIR on 16.3.1996. Later, the matter appears to have been compromised between the husband and wife whereby husband has paid a sum of Rs.25 lacs as full and final settlement. Wife, on her part, agreed to withdraw all the proceedings initiated at her instance. This compromise is stated to have been reached between the parties on the intervention of relatives and respectables. Copy of

the compromise is annexed with the petition as Annexure P-2.

In fact, the above noted compromise has not come about in routine. The reply filed on behalf of the State would show that on completion of investigation of the impugned FIR, challan was presented against the petitioner under Sections 406, 494 IPC on 27.1.1997. Charges were also framed. Thereafter, the petitioner filed Criminal Miscellaneous No.34592 M of 1998 under Section 482 Cr.P.C. for quashing of this FIR. This Court, vide its order dated 27.9.2000, allowed the petition and quashed the present FIR. The State, however, challenged this decision before the Hon'ble Supreme Court through S.L.P. (Criminal) No.789 of 2001. The Hon'ble Supreme Court vide its order dated 24.8.2001 set-aside the order dated 27.9.2000 passed by this Court vide which FIR was quashed. After the decision in SLP, the trial Court continued with the trial, which is pending. During the pendency of this trial, the parties have reached a compromise on 30.8.2005. The terms of the compromise are that respondent No.2 (party No.1) shall withdraw the case titled as State Vs. Darhsan Singh, FIR No.35 dated 16.3.1996 and so also the complaint titled Swaran Kaur Vs. Darshan Singh filed by respondent No.2, which is pending before the Court. This complaint was filed for an offence under Section 494 IPC in terms of the observations made by the Hon'ble Supreme Court while allowing the S.L.P. In addition, an application for maintenance was also filed by respondent No.2 and her daughter, which was pending before the Court. It was mutually agreed that to finish all these pending litigation between the parties, a petition would be filed in the High Court by the petitioner and respondent No.2 and they would appear

and make a statement in this regard so that all criminal proceedings pending between the parties could end. This compromise was subject to the condition that the petitioner would pay a sum of Rs.25 lacs to respondent No.2 and her daughter as a maintenance in lieu of their any right in the movable and immovable property of the petitioner. The sum of Rs.25 lacs stands paid through pay order Nos.323392 dated 23.8.2005 amounting to Rs.20 lacs drawn at Canara Bank, Jalandhar and No.537459 dated 23.8.2005 of Rs.5 lacs drawn at Indian Bank, Jalandhar. Both these pay orders are encashed and, thus, a sum of Rs.25 lacs stands paid to respondent No.2, which he has received. The payment of the amount is not disputed before me. The counsel, however, submits that respondent No.2 has challenged this compromise by filing a civil suit. In a way, respondent No.2 seems to be backing out of the compromise. Counsel has also opposed the prayer for quashing the FIR as made in the present petition.

Counsel for the petitioner would submit that respondent No.2 can not be permitted to resile from the terms of the compromise to which she had agreed once and part of which is acted upon. Respondent No.2 has received a substantial sum of Rs.25 lacs in terms of this agreement. The counsel would further point out that respondent No.2 has already made a statement before the Judicial Magistrate Ist Class, Malerkotla, about this compromise where the complaint filed by her for offences under Section 494 read with Section 109 IPC was pending. The Magistrate, taking note of this statement and the compromise, has permitted the complaint to be withdrawn and has discharged the petitioner. Copy of the order is

annexed as Annexure A-3. Respondent No.2 even has made a statement in a case pending for enhancement of compensation. The compromise effected between the parties has again been placed on record of this case and accordingly, the case is ordered to be withdrawn on 3.9.2005. Copy of this order is now attached as Annexure A-2. The counsel has also referred to Annexures A-4 and A-5, which are the affidavits submitted by Parminder Singh and Mohinder Singh, who are witnesses to this compromise, to show that this compromise was voluntarily reached and there was no coercion etc. as is now made out. It is pointed out that civil suit filed by respondent No.2 to challenge the compromise has been dismissed in default, a fact which is conceded by the counsel representing respondent No.2. Referring to these details and the fact that respondent No.2 has already received a sum of Rs.25 lacs, counsel for the petitioner would say that she can not be permitted to back out of this compromise, particularly when she has acted upon and taken advantage of the terms of the compromise. In support, the counsel has referred to the case of **Mohd. Shamim Vs. Smt.Nahid Begum**, 2005 AIR (SC) 757 and **Ruchi Agarwal Vs. Amit Kumar Agrawal**, 2005 (3) S.C.C. 299. In the case of Mohd.Shamim (supra), the Hon'ble Supreme Court noticed that the parties had entered into a compromise and wife got a divorce by mutual consent. She, however, later on refused to withdraw the FIR lodged at her instance under Sections 498A, 506 IPC despite compromise. The Hon'ble Supreme Court termed this conduct of the wife to be aimed at to harass the husband and accordingly quashed the FIR. Similarly in

the case of Ruchi Agarwal (supra), wife had refused to withdraw the FIR though she got divorce by mutual consent on the basis of a compromise. Finding this action to be a conduct which was aimed at harassing the husband, the Hon'ble Supreme Court quashed the FIR.

Learned counsel appearing for respondent No.2 could not raise any substantial plea either to rebut the facts as aforementioned. He also could not say anything about the law laid down in the judgments referred to above. Once the respondent has acted upon the compromise and had taken advantage accruing therefrom, Respondent No.2 can not now be permitted to back out from the said compromise. The conduct of respondent No.2 can not be justified in accepting a sum of Rs.25 lacs under the compromise and now not adhering to its terms. The aim in challenging this compromise without refunding the amount and not to make a statement for quashing of the present FIR seems to be harassing the petitioner, which is nothing but an abuse of the process of the Court.

Accordingly, the present petition is allowed. FIR No.35 dated 16.3.1996 under Sections 49, 406, 498A IPC, registered at Police Station Malerkotla, District Sangrur is quashed.

September 10, 2007

Khurmi

**(RANJIT SINGH)
JUDGE**